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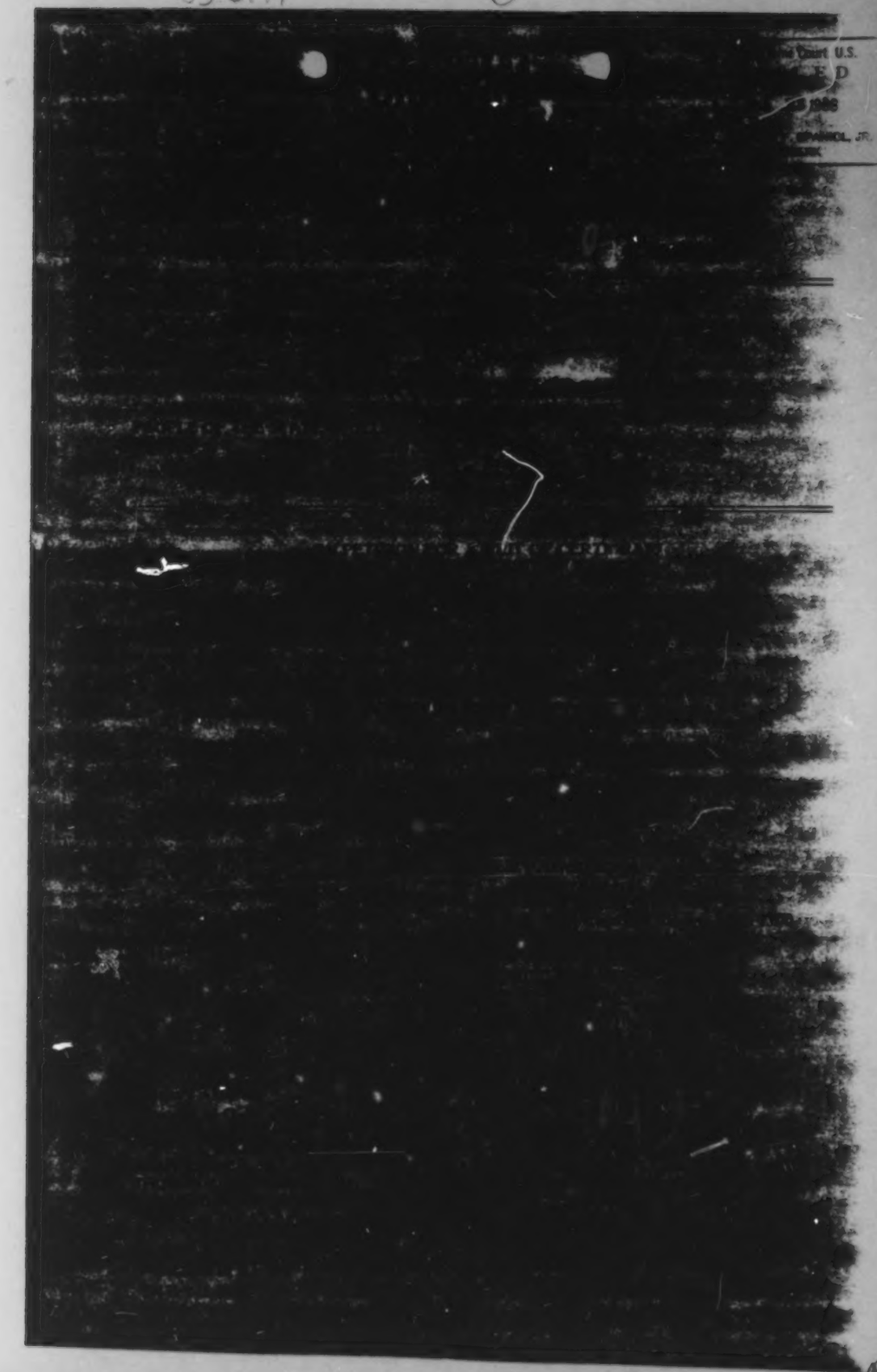

QUESTION PRESENTED

Whether the fact that a juror had attended the same church as the mother of one of the deceased murder victims denied petitioner his right to a fair trial before an impartial jury, where the mother of Marilyn Green did not testify at trial, where the juror did not even recognize the mother's name when the list of potential witnesses was read during jury selection, where the verdict was consistent with the overwhelming evidence of guilt, and where the trial judge questioned the juror and determined that the verdict was free from bias.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCOTBER TERM, 1985

ANTHONY PORTER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

Petitioner was found guilty or armed robbery, unlawful restraint, and two counts of murder and unlawful use of weapons, following a jury trial in the Circuit Court of Cook County, Illinois. Petitioner waived the jury for purposes of sentencing, and elected to have Judge Robert L. Sklodowski decide the relevant issues on the question of the death penalty. Judge Sklodowski found that Petitioner was eligible for the death penalty and subsequently sentenced Petitioner to death. Petitioner's convictions and sentence were affirmed by the Illinois Supreme Court in a decision reported at People v. Porter, 111 Ill.2d 386, 489 N.E.2d 1329 (1986) (Pet's App. A1).

JURISDICTION

Petitioner has filed a petition for a writ of certiorari and this Court's jurisdiction has been properly invoked pursuant to 28 U.S.C. 1257 (3).

STATEMENT OF THE CASE

The facts relevant to the issues raised by Petitioner are adequately set forth in the opinion of the court below, and need not be restated at length. Respondent directs this Court's attention to the argument portion of this Brief in Opposition, wherein the facts pertaining to the claim of error are discussed.

REASON FOR DENYING THE WRIT

THE FACT THAT A JUROR HAD ATTENDED THE SAME CHURCH AS THE MOTHER OF ONE OF THE DECEASED MURDER VICTIMS IN NO WAY DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL BEFORE AN IMPARTIAL JURY, WHERE THE MOTHER OF MARILYN GREEN DID NOT TESTIFY AT TRIAL, WHERE THE JUROR DID NOT EVEN RECOGNIZE THE MOTHER'S NAME WHEN THE LIST OF POTENTIAL WITNESSES WAS READ DURING JURY SELECTION, WHERE THE VERDICT WAS CONSISTENT WITH THE OVERWHELMING EVIDENCE OF GUILT, AND WHERE THE TRIAL JUDGE QUESTIONED THE JUROR AND DETERMINED THAT THE VERDICT WAS FREE FROM BIAS.

After his convictions and sentence were affirmed by the Illinois Supreme Court, Petitioner filed the instant petition for a writ of certiorari. Petitioner contends he was denied a fair trial before an impartial jury because of a juror's relationship to the mother of one of the deceased murder victims. Petitioner further contends that he was denied an opportunity to actually prove bias, and that the trial court's questioning of this juror was inadequate. The People maintain that the fact that a juror had attended the same church as the mother of one of the victims in no way denied Petitioner his right to a fair trial before an impartial jury, where the mother of Marilyn Green did not testify at trial, where the juror did not evern recognize the mother's name when the list of potential witnesses was read during jury selection, where the verdict was consistent with the overwhelming evidence of guilt, and where the trial judge questioned the juror and determined that the verdict was free from bias. The People further maintain that no "relationship" existed, and that Petitioner had an adequate opportunity to establish bias at his hearing on a motion for a new trial, but failed to sustain his burden of proof.

The verdict in the instant case was returned on September 7, 1983, by a jury which included Lillie B. Trigleth. The jury was sent home for the night and requested to return for the death hearing the following morning. (R. 899-900) The next day, the defendant, Anthony Porter, waived the jury and elected to have the court determine his sentence. (R. 917)

The court then brought the jury out to dismiss them. (R. 932)

The follwoing colloquy occurred between the court and juror Trigleth.

> THE COURT: Ladies and gentlemen, I did not formally dismiss you so you are still under oath, under the oath that you took as jurors. It was brought to my attention before I actually formally dismissed you that one of the jurors stated that he knew that some other juror purportedly or allegedly went to church -- to the same church as one of the decedent's mother. Is that right, was that your -- please identify yourself.
>
> MRS. TRICKLET [sic]: Yes, but that didn't make any difference to me about that.
>
> THE COURT: Thank you, ma'am. It didn't make any difference?
>
> MRS. TRICKLET: No.
>
> THE COURT: Ma'am, your name again?
>
> MRS. TRICKLET: Lilly B. Tricklet.
>
> THE COURT: It didn't make any difference to you, you abided by your oath and did you recognize that fact when I had read you the name of all the witnesses in the beginning before we even started, you didn't recognize that?
>
> MRS. TRICKLET: No.
>
> THE COURT: When did you finally recognize --
>
> MRS. TRICKLET: After it had got started and everything was going on.
>
> THE COURT: But, it made no difference to you, is that right?
>
> MRS. TRICKLET: No, that is right.
>
> THE COURT: I will now formally dismiss you. You are all dismissed. (R. 933-934)

It is clear that the juror's knowledge of the victim's family was remote. There is no allegation that the juror knew the victim, Marilyn Green, at all. Nor is it alleged that the victim's mother was a friend of Mrs. Trigleth's. The record discloses only that the ladies had attended the same church. (R. 953) Indeed, Mrs. Trigleth did not even recognize the mother's name when the court read it at the outset of jury selection. (R. 933)

Petitioner's consistent reference to a "relationship" between juror Trigleth and Marilyn Green's mother is misleading. Petitioner's contention that juror Trigleth failed to inform the court during the vior dire of this "relationship," ignores the fact that juror Trigleth did not recognize the mother's name when read by the court during jury selction. The fact that juror Trigleth did not later inform the court of any "relationship" between her and a witenss was not due to an effort to mislead or deceive. Aside from the fact that mother of the victim, Marilyn Green, never testified and was not a witness, juror Trigleth swore to the court that she was not biased by the fact that she had attended the same church as the mother of Marilyn Green. (R. 933-934)

Petitioner asserts that an "inference of bias" in this case was strengthened by the post-trial affidavit of another juror, Isaias Torres. The affidavit avers, in relevant part:

> 5) that this same black female juror (Mrs. Trigleth) when the jury was given the case to deliberate on, entered the jury room and said, as far as she was concerned, they could vote guilty right then, and that she made this statement before any discusion was had on the evidence in the case or any discussion of the testimony of any of the witnesses. (R. 1206-1207)

The People maintain that the Illinois Supreme Court correctly held that juror Trigleth's statement was proper. People v. Porter, 111 Ill. 2d 386, 405, 489 N.E.2d 1329 (1986). The statement was made after the jury had heard all of the evidence and had been instructed on the law. The jury had retired to deliberate. Therefore, the comment was timely and appropriate. Nothing which is contained in the post-trial affidavit indicates that juror Trigleth's comment was made merely because she had attended the same church as the mother of one of the victims. Rather, as noted by the Illinois Supreme Court, Mrs. Trigleth's comment was consistent with the evidence of defendant's guilt, which was overwhelming. Id.

Petitioner contends that he was denied the opportunity to prove actual bias because the trial court denied defense counsel's request that juror Trigleth be questioned further. Petitioner's argument ignores the fact that

the trial judge had observed the juror's demeanor during both voir dire and post-verdict questioning, and was satisfied by her repeated assurances that the fact that a victim was the daughter of someone who had attended her church made no difference in the case. Moreover, the Illinois Supreme Court properly held that Petitioner failed to meet his burden of proof at the hearing on his motion for a new trial. Petitioner concedes that the post-trial hearing "consisted of a short argument by counsel for petitioner and for the state." (Pet. p. 6) Nevertheless, Petitioner now contends that the trial court would never permit further questioning of juror Trigleth and that an attempt to obtain a court ordered subpoena for juror Trigleth would have been futile. The People maintain that Petitioner's contentions are merely self-serving speculation and do not excuse his failure to sustain his burden of proving bias and prejudice. Petitioner never requested a subpoena, and although an affidavit of juror Torres was presented and considered in his motion for a new trial, Petitioner fails to explain why no attempt was made to secure an affidavit of juror Trigleth or any other person. As the Illinois Supreme Court correctly held, Petitioner failed to show actual prejudice, and also failed to show that a relationship existed of such a character that a rebuttable presumption of prejudice would arise therefrom.

Petitioner is entitled to a jury of his peers, free from taint or bias. Nowhere in the law is it written that the defendant is entitled to a jury of strangers. Such a rule would render all trials in small towns or rural areas impossible. It is reasonable to assume that except for in large urban areas, it is common for potential jurors to be acquainted with the facts or to have some knowledge of the parties participating. The test, of course, is their ability to keep open minds and to render unprejudiced and unbiased verdicts in spite of what they have heard and what they know.

In People v. Cole, 54 Ill.2d 401, 298 N.E.2d 705 (1973), the Illinois Supreme Court found that the trial court did not err in refusing to dismiss a juror for cause despite the fact that the juror, Russell Davis, knew both the State's Attorney and an Assistant State's Attorney, and one of the deceased victims. Davis also had lived next door to one of the State's witnesses, a

doctor, who had also been Davis' family physician. Another witness for the State was married to Davis' son. Davis was also a friend of the Sheriff, another material witness, and had recently served as treasurer of the campaign fund for the Sheriff. Davis had also discussed the case with the Sheriff. Davis' wife was a deputy for the Board of Review and had often assisted defense counsel with matters before the Board. Id., 54 Ill.2d at 411-413. The Illinois Supreme Court held in Cole that mere suspicion of bias is not sufficient to disqualify a juror. Id. at 415.

In the case sub judice, juror Trigleth eradicated from the record even the suspicion of bias by her post-verdict assurance that her mere acquaintance with a victim's mother made no difference to her decision in the case. (R. 933-934)

As this Honorable Court stated in Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639, 1642-1643 (1961), "It is not required that jurors be totally ignorant of the facts and issue involved.... [I]t is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in Court." In the instant case, a juror's acquaintance with a victim's mother, who was not a witness, is the sole basis for Petitioner's request of this Court to exercise its discretion. No issue of national importance is presented, and a reversal of defendant's convictions for the reason stated would prevent the majority of jurisdictions in the United States from conducting jury trials.

Petitioner relies on Smith v. Phillips, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982), where a juror, during defendant's trial, applied for employment as an investigator in the District Attorney's Office and the prosecuting attorneys, upon being informed of the application, withheld this information from the trial court and defense counsel until after the trial. At a post-trial hearing, the trial judge ruled that these events did not influence the verdict. This Court upheld the trial judge's ruling and stated:

> "[D]ue process does not require a new trial every time a juror has been placed in a potentially compromising situation. Were that the rule, few trials would be constitutionally acceptable.... [I]t is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote."

Id., 455 U.S. at 217, 102 S.Ct. at 946.

In the instant case, as in Smith v. Phillips, supra, Petitioner was given the opportunity at a post-trial hearing to show bias, and he failed to sustain his burden of proof. Petitioner was not denied a hearing, and was not prevented from calling witnesses. Moreover, the trial court determined from questioning juror Trigleth that her verdict was based on the evidence, which was overwhelming, and not on any acquaintance to a victim's mother.

For all of the above reasons, the People submit that Petitioner is not entitled to a writ of certiorari.

CONCLUSION

For all the foregoing reasons, Respondent respectfully prays that this Honorable Court deny the instant petition for Writ of Certiorari.

Respectfully submitted,

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